THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.9823 of 1999

ORAL ORDER:

This writ petition is filed seeking a Certiorari to call for the records relating to proceedings No.E/XP/227/153/90/8 dated 7.8.1990 on the file of the first respondent as confirmed by the appellate authority and revisional authority in their proceedings dated 6.2.1991 and 12.10.1998 respectively and quash the same as arbitrary and illegal.

The facts are not much in dispute. It appears, petitioner was appointed as a Constable into the service of Railway Protection Force with effect from 1.5.1981. When he was working at Rajahmundry, he was issued with a charge sheet dated 11.5.1990 enumerating the following charges.

1. Absent on 22.1.1990 for one day.
2. Absent from 24.1.1990 to 4.2.1990 (12 days)
3. Absent from 9.3.1990 to 30.3.1990. (22 days)
4. Absent from 13.4.1990 to 7.6.1990. (25 days)

Thereafter, after conducting a detailed enquiry into the matter, the petitioner was ultimately removed from service with effect from 7.8.1990. Questioning the same, he preferred appeal and revision, which were rejected. Aggrieved thereby, the present writ petition is filed.

The learned counsel for petitioner Mr.J.M.Naidu strenuously contended that in all, four spells absenteeism is the subject matter of enquiry. In the first spell, petitioner was absented from duty for only one day, in the second spell 12 days, in the third spell 22 days and in the fourth spell, petitioner was absented from duty for 25 days. Insofar as first and second spells are concerned, they were regularized, whereas against third spell, a minor punishment of stoppage of one increment was imposed, therefore, the enquiry should have been conducted only against fourth spell and there was no necessity of including three spells for the purpose of

enquiry. Whereas, the respondents have included all the four spells for the purpose of enquiry treating as major penalty of removal from service, which can neither said to be reasonable or legal. Further, the disciplinary authority and the appellate authority have not looked into the matter.

Whereas the learned counsel appearing for respondents Sri Gowrishankar Sanghi submitted that first and second spells were not regularized. Of course, an enquiry was conducted into third spell of absenteeism and when the fourth spell was came to light, all the spells were included in the enquiry and after putting the petitioner on notice and giving fair and reasonable opportunity, the impugned order was passed, which was confirmed by the appellate authority as well as revisional authority. Apart from this, petitioner is a habitual absentee and in this regard, the learned counsel for respondents drawn the attention of this Court to para 5 of the counter, whereunder, the earlier unauthorized absenteeism has been enumerated, which reads as under:

1.	13.6.1981 to 16.6.1981	–	4 days absent LWP.
2.	2.7.1981 to 9.7.1981	-	8 days absent LWP
3.	1.9.1981 to 14.9.1981	-	14 days absent LWP
4.	4.3.1982 to 8.3.1982	-	5 days absent LWP
5.	6.4.1982 to 20.4.1982	-	15 days absent LWP
6.	7.6.1982 to 22.6.1982	-	16 days absent LWP
7.	23.9.1983 to 24.9.1983	-	2 days absent LWP
8.	6.9.1989 to 7.9.1989	-	8 days absent LWP
9.	7.11.1989 to 14.11.1989	-	8 days absent LWP
10.	8.12.1989 to 12.12.1989	-	5 days absent LWP
11.	7.1.1990 to 19.1.1990	-	13 days absent LWP

It was further stated that subsequently also, petitioner had absented from duty before removing him from service.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

There is no necessity of going into all the details.

From para 5 of the counter, it is clear that the petitioner is a habitual absentee. May be, this was not formed part of the charge sheet, but for the purpose of considering for imposing any lesser punishment, these things can be taken into consideration. Insofar as impugned order is concerned, it cannot be said that the respondents have committed any illegality or irregularity calling interference of this Court under Article 226 of the Constitution of India. The enquiry was properly conducted and since the petitioner absented from duty unauthorisedly, he was inflicted with the punishment of removal from service and the same cannot either said to be arbitrary, illegal or shockingly disproportionate to the misconduct alleged against the petitioner. In fact, imposing of punishment of removal from service is contemplated under Rule 156 of Railway Protection Force Rules, 1987, which is just and proper in the overall circumstances of the case. The averments made by the petitioner do not inspire the confidence of the Court calling interference under Article 226 of the Constitution of India. The writ petition is devoid of merits and liable to be dismissed.

The learned counsel for petitioner however, raised yet another important legal aspect stating that the enquiry officer's report was not furnished to the petitioner before he was removed from service. Of course, the respondents also conceded that such report of the enquiry officer was not furnished to the petitioner, but unfortunately this does not attract the principle laid down in **ECIL v. KARUNAKARAN's** case since **RAMZAN KHAN's** case, the cut off date was given at 20.11.____, whereas the punishment order was passed on _____, therefore, this judgment has no relevance to the facts of this case. The learned counsel for petitioner states that even in case of removal, petitioner is entitled to certain compassionate allowance etc., as per rules. If petitioner is really entitled to such things, this order does not prevent him from claiming such relief from the respondents and the respondents are not precluded from granting such reliefs if the petitioner is entitled for the same.

For all the reasons, the writ petition is dismissed.

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C.V.RAMULU,
J

Date: 27.4.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.9823 of 1999

27.4.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.9823 of 1999

Date: 27th April, 2007

Between:

A.S.S.Prakasha Rao

.. Petitioner

And

The Divisional Security Commissioner,
Railway Protection Force, Vijayawada
and others.

.. Respondents